

OGC 79-06110
3 July 1979

ATTACHMENT

MEMORANDUM FOR: Deputy Chief, Contract Personnel Division
Office of Personnel

STAT FROM :
Assistant General Counsel

SUBJECT : Post Differential

REFERENCE : Memo to DPP, from ADDO, Same Subject,
Undated

1. You have requested our views on the recommendation contained in reference that the Agency pay post differential retroactive to the date of arrival for all Agency employees on extended TDY travel.

2. If accepted, this practice would be contrary to the current provision of section 540 of the Standardized Regulations (Government Civilians/Foreign Areas) which states:

To become eligible for post differential other than that provided in section 533 while the employee is absent from the post on detail he/she must have served, during any one period of absence, 42 days (sec. 511d) on detail at one or more differential posts or places designated for non-foreign area cost-of-living allowance) by the Civil Service Commission in Ch. 591-FPR. No post differential other than that provided in section 533 is authorized for the period required to obtain eligibility. (See

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3. The CIA Act of 1949, as amended, contains no specific allowance authority. The Agency is therefore bound by the general law in this area, The Overseas Differentials and Allowances Act and the implementing regulations, promulgated by the Secretary of State, unless one can invoke the Agency's special authorities for circumstances which are extraordinary or confidential in nature related to the unique mission of the

Agency. Payment in such circumstances would not be made under the authority of the post differential section of the Standardized Regulations (GC/FA), but as an exceptional administrative or operational expense payable under the authority of Section 8 of the CIA Act of 1949, as amended. Whether a payment is appropriate under a particular circumstance, is a judgmental question to be considered by the designated management official, utilizing guidance from the Regulations and this Office.

4. Reference does not identify any cover, security or unique Agency-associated factors which would support a conclusion that use of the Agency's Section 8 authorities would be necessary. Nor for that matter has the Department of State determined that a revision of section 540 is required on purely administrative grounds. [REDACTED] The SSA/DDA advises that this issue has been raised with the Department of State and they are presently examining the 42-day waiting period established in section 540.

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